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OPINION

OF THE CONFLICT OF INTEREST COMMISIONER PURSUANT TO SECTION 19(1) OF THE *MEMBERS' CONFLICT OF INTEREST ACT*

IN THE MATTER OF AN APPLICATION BY SHANE SIMPSON, MLA FOR VANCOUVER-HASTINGS, OPPOSITION CRITIC FOR ENVIRONMENT, WITH RESPECT TO ALLEGED CONTRAVENTIONS OF PROVISIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT* BY THE HONOURABLE PAT BELL, MLA FOR PRINCE GEORGE NORTH, MINISTER OF AGRICULTURE AND LANDS

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May 11, 2006

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Office of the Conflict of Interest Commissioner

The Honourable H. A. D. Oliver, Q.C.
Commissioner

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IN THE MATTER OF AN APPLICATION BY SHANE SIMPSON, MLA FOR VANCOUVER-HASTINGS, OPPOSITION CRITIC FOR ENVIRONMENT, WITH RESPECT TO ALLEGED CONTRAVENTIONS OF PROVISIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT* BY THE HONOURABLE PAT BELL, MLA FOR PRINCE GEORGE NORTH, MINISTER OF AGRICULTURE AND LANDS

Shane Simpson, MLA for Vancouver-Hastings and Opposition Critic for Environment, (the "Applicant") has requested by letter dated March 9, 2006, pursuant to section 19(1) of the *Members' Conflict of Interest Act* (the "Act"), that I give an Opinion respecting compliance by the Honourable Pat Bell, MLA for Prince George North and Minister of Agriculture and Lands, with sections 2, 3 and 5 of the *Act*. More particularly, the complainant requests my opinion pursuant to section 19 of the *Act* with respect to the following questions:

1. Did Mr. Bell on behalf of the Prince George Snowmobile Club (the "PG Snowmobile Club") intervene in the Kakwa Provincial Park and Protected Area ("Kakwa") planning process by using the power and authority of his office to influence the decision to be made by BC Parks to further his private interest in maintaining snowmobile access to Kakwa?

2. Since Mr. Bell's ministerial responsibilities extend to the coordination of land and resource issues affecting species at risk and since it is widely accepted that motorized recreational activity, including snowmobiling, can have significant detrimental effects on species at risk, regulatory limits on snowmobiling are directly related to the protection of those species. Does Mr. Bell's private interest in snowmobiling constitute, and will it continue to constitute, a reasonable perception that his ability to perform his official functions in relation to species at risk is affected by his private interest in snowmobiling and if so, does this constitute an apparent conflict of interest?

BACKGROUND

BC Parks is currently undertaking a planning process to determine the amount of access snowmobiles should be given in the Kakwa. A Draft Management Plan released in 2004 proposed snowmobile closures for two key areas of Kakwa: Mount Sir Alexander and Mount Ida.

Kakwa Provincial Park

Kakwa, a 1710 sq km area, previously a provincial recreation area, was designated a Provincial Park in 2000. It forms part of the Rocky Mountain chain of mostly undeveloped wilderness extending northwest into Northern British Columbia beyond the Banff and Jasper National Parks to the southeast. The use of and access to recreational facilities and the activities in Kakwa have been under active study for an extensive period of time and BC Parks has done substantial work in the preparation of a Draft Management Plan since at least 2001.

The population of the Prince George area – who constitute a major portion of the Park users – represent a variety of interests. Many favour managing the Park as wilderness and wish to see it managed as part of a naturally functioning ecosystem. Many are concerned with wildlife protection. There are fishers and professional trappers, backpackers, campers, hikers, back country skiers, horseback riders, snowmobilers, motor home owners, guide outfitters, float plane operators and many others. In preparation of the Draft Management Plan, BC Parks has held a round of open houses with a chance to talk one-on-one with many Park visitors. They have also had good response to questionnaires they sent out and to their web page. They have consulted, as early as 2001, with the local MLAs: Shirley Bond, MLA for Prince George-Mount Robson and Pat Bell, MLA for Prince George North. The planning department of BC Parks has kept the public informed of their activities in a series of informative newsletters.

The Meeting of June 4, 2005

A Draft Management Plan was prepared and a meeting was held at the BC Parks office in Prince George on June 24, 2005 attended by 11 representative stakeholders and experts, a number of senior public servants, Pat Bell, MLA and Shirley Bond, MLA as the local Members of the Legislative Assembly and a facilitation team consisting of Norman Dale as facilitator, and Holly Nathan, a UNBC history graduate student as recorder. A meeting summary was prepared in draft form by Ms. Nathan and was then critically reviewed by those attending. Two subsequent revisions resulted in a final draft being prepared by the facilitator which, in his view and that of BC Parks, represented a fair characterization of the proceedings and also contained a brief set of summary comments by the facilitator and the key points raised during the re-drafting process. I note from the meeting summary that during the question period which followed BC Parks' presentation, there was some discussion of the broad purposes that parks and wilderness areas serve and that the two MLAs present noted the need for balance and spoke of the current Government's view that "parks are for people". Others responded emphasising the importance to British Columbians of sustaining undisturbed wilderness areas.

ALLEGATION OF FACT

- Mr. Bell rides snowmobiles and has been a member of the PG Snowmobile Club.

- Both Kakwa and the PG Snowmobile Club are located outside of Mr. Bell's Prince George North Constituency.

- At the request of the PG Snowmobile Club of members, arising from their concern regarding the direction of the Kakwa plan, Mr. Bell "has intervened in the Kakwa planning process". He has attended several related meetings, including a meeting with BC Parks officials, and is reported as having taken "the side of the snowmobilers". BC Parks is currently "revisiting" the Kakwa plan. Mike Sexsmith, President of the PG Snowmobile Club, is reported as saying that Mr. Bell was "definitely" instrumental in the

decision to do so. BC Parks has indicated that it is reconsidering the Mount Sir Alexander and Mount Ida closures proposed in the 2004 Draft Management Plan.

NATURE OF CONTRAVENTION ALLEGED

- Mr. Bell holds the office of Minister of Agriculture and Lands.

- By "intervening in the Kakwa planning process on behalf of the Association, Mr. Bell sought to use the power and authority of his office to influence the decision to be made by BC Parks, to further his private interest (shared with the Association) in maintaining snowmobile access in Kakwa".

- The Association "requested Mr. Bell's intervention in the Kakwa planning process – as opposed to the intervention of any other Association member – because of the power and authority of Mr. Bell's office. That power and authority cannot be 'turned-off', and must have been felt in Mr. Bell's interactions with BC Parks officials".

- Mr. Bell "intervened in the Kakwa planning process and met with BC Parks officials on the behalf of the Association, to influence the direction of the Kakwa plan in favour of the Association's interests". The Association favours maintaining snowmobile access in Kakwa. As a snowmobiler and having been a member of the Association, Mr. Bell "has a private interest in maintaining snowmobile access in Kakwa".

REQUEST FOR OPINION

The applicant requests that the Commissioner conduct an inquiry into this matter under section 21 of the *Act* and report his Opinion to the Speaker of the Legislative Assembly.

PROCEDURE

In dealing with questions referred to me by Members of the Legislative Assembly, for an opinion under section 19(1) of the *Act*, I may conduct an investigation or, on giving the Member concerned reasonable notice, an inquiry. Experience has shown that an inquiry generally involves the retaining of Commission Counsel and of court reporters and is normally attended by considerable delay frequently occasioned by prior court commitments of counsel or the member involved and of various witnesses. It is a slow procedure generally necessitating the expenditure of substantial public funds. It has been the general practice of my office to conduct the operations of the Office of Conflict of Interest at minimal expense to the taxpayer. I prefer, for these reasons, to handle such matters as investigations rather than inquiries upon becoming satisfied after a preliminary assessment of evidence that such course is necessary.

MS. BARBARA MURRAY'S COMPLAINT

I have, in addition, had the benefit of a letter from Ms. Barbara Murray of North Vancouver, a private citizen, requesting I review Mr. Pat Bell's possible "conflict of interest". She asks me to consider his activities in his snowmobile club, and his duties to look after "species at risk", and suggests that there exists an apparent conflict of interest between his ministerial duties and his private interest in snowmobiling. She comments that "snowmobiling or motorized vehicles of any kind and mountain bikes are becoming more and more controversial in Parklands in regards to negative impacts on wildlife and its habitat". I have decided to treat that complaint as part of this present review rather than as a grounds for commencing a second separate procedure.

THE STATUTORY PROVISIONS

The following are the relevant sections of the *Members' Conflict of Interest Act*:

Definitions

1 "private interest" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

(a) applies to the general public,
(b) affects a member as one of a broad class of electors, or
(c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

Conflict of interest

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Influence

5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Activities on behalf of constituents

6 This Act does not prohibit the activities in which members normally engage on behalf of constituents.

Commissioner's opinion on referred question

19 (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by

application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.

THE ISSUES

1. **Was the Member involved in the Kakwa planning process?**

- If so, what was that involvement?
- Was such involvement – if any – justified by the *Members' Conflict of Interest Act*?
- In what capacity – if any – did the Member become involved?
- When did such involvement occur?
- Did the Member use "the power and authority of his office" to influence BC Parks' decision?
- What "private interest" did the Member seek to further?

2. **Was the Member in breach of his statutory responsibilities for coordination of resource issues?**

ASSESSMENT OF EVIDENCE

I have interviewed Mr. Shane Simpson, MLA (the complainant), Mr. Mike Sexsmith, President of the PG Snowmobile Club, Ms. Gail Ross, BC Parks Planning Officer, and The Hon. Pat Bell, MLA. I have also been provided with written information by Mr. Don Cadden, Acting Regional Manager, Environmental Stewardship Division, Ministry of Environment with a report from the Vancouver Sun newspaper relating to a study by Wildlife Consultant, Wayne McCrory and with a detailed summary of the meeting held at the BC Parks office in Prince George on June 24, 2005.

Ms. Gail Ross, who was actively involved in the planning process and in the meeting of June 24, 2005, was interviewed by me. She said that she did not feel that at any time during the meeting of June 24th Mr. Bell was lobbying for snowmobiling access in the Kakwa and that he said

relatively little during the meeting – substantially less in fact than his fellow MLA. She did not feel that at any time Mr. Bell appeared to be "intervening" on behalf of the snowmobilers at the meeting but that four years previously Mr. Bell, as one of the local Members, had expressed interest in the future development of the Park. At that time, the PG Snowmobile Club had applied for permission to build a cabin outside the Park. Decision on that issue had been deferred until the outcome of the snowmobile use application was assured – it being pointed out that if permission was not granted, the cabin might be redundant. I was advised that, in the meantime, snowmobile use had greatly increased and that there has been a great deal of outside involvement on behalf of snowmobilers in the proposals for development of the Kakwa Draft Management Plan. Ms. Ross did not suggest that the outside pressure on behalf of snowmobiling interest involved Mr. Bell and told me that at no time during the meeting of June 24th had Mr. Bell advocated on behalf of snowmobilers or indicated that he was representing them but that he appeared pretty quiet throughout the meeting.

I interviewed the Honourable Pat Bell, MLA who advised me as follows:

He has been the MLA for Prince George North since 2001. In that capacity he has been actively interested on behalf of his constituents in the development of the Kakwa. As MLA he was being lobbied for some considerable time by constituents to represent their interests in the development and especially in this connection by his very vociferous snowmobiling constituents but says that he played no part in the planning process, but that as MLA he had attended an earlier open house and had received numerous telephone calls from constituents. He did not feed these telephone calls into the planning process.

The Member enjoys snowmobiling himself and goes snowmobiling about four times a year. He has been snowmobiling only once in the Kakwa area.

I questioned the Member, particularly about the allegation that he had intervened in the planning process by "using the power and authority of his office to influence the decision to be made by BC Parks to further his private interest in maintaining snowmobiling access to Kakwa".

Mr. Bell was originally a private Member, became Minister of State for Mining, but did not become Minister of Agriculture and Lands until approximately one week prior to the June 24th meeting. He attended that meeting essentially as an observer and certainly not as an advocate for any special interest group. He states that his attendance, like that of the Hon. Shirley Bond, MLA, was purely in his capacity as a local MLA and that he was not there at the request of the PG Snowmobile Club, nor had he been asked to represent the PG Snowmobile Club, speak on its behalf, or be its eyes and ears at the meeting. He says that he was not a member of the PG Snowmobile Club at the time of the meeting nor at the time of the filing of the present complaint but that he again become a member in recent weeks.

OPINION

1. Was the Member involved in the Kakwa Planning Process?

   I find that the Member's involvement was that of an observer as a local MLA on behalf of his constituents. I find that when the complainant refers to "the power and authority of his office" in reference to the Member, he is referring to the office of Minister of Agriculture and Lands to which the Member was appointed approximately one week before the June 24, 2005 meeting. I am satisfied from the reading of the statement of Ms. Gail Ross and the evidence of the Member himself, that the office whose power and authority he was alleged to have used was not one which he had held until a week prior to the meeting: that up to that point he had not sought to intervene in the decision-making and that at the meeting itself his function was that of an observer on behalf of his constituents. I find that the fact that the Member had on one occasion snowmobiled in the Kakwa area and that he went snowmobiling elsewhere approximately four times a year was not sufficient to constitute a "private interest" within the meaning of the *Members' Conflict of Interest Act*.

2. I find that the Minister does not appear to have ministerial responsibilities for coordination of resource issues affecting species at risk either under the *Wildlife Act* or under the *Forest*

Act. If such responsibilities existed they would only arise upon his appointment as Minister of Agriculture and Lands.

I accordingly find that the Member has not committed any infractions of the *Members' Conflict of Interest Act* as alleged.

I add the following observations, although they form no part of the basis for my opinion: if a Minister must, in the course of his duties, consider the interests of two conflicting interest groups, e.g. snowmobilers and conservationists, does it follow that if he himself is a snowmobiler he cannot participate in a decision-making process involving the conflicting interests of both groups or, alternatively, if he is a keen conservationist must he withdraw to avoid attack by snowmobilers on the basis on an alleged conflict of interest? If a minister of highways has to consider the interests of both cyclists and motorists, must he withdraw from participation in any decision-making process because he rides a bicycle? Or are these the conflicting interests which any minister has to face on a daily basis and is the remedy for those who are unhappy with the minister's decision to be found at the ballot box rather than in a complaint under the *Members' Conflict of Interest Act*? This should not be regarded as any implied criticism of either of the complainants in the present case, both of whom have acted very properly in bringing these matters to the Commissioner's attention.

It may well be that since this dispute appears to have generated inordinate heat between the snowmobiling interests and the conservationist interests, the Member might wish to consider the wisdom, in the event of any similar future disputes, of asking a fellow Member to become involved in future Kakwa developments in his place.

Dated this 11th day of May, 2006
In the City of Victoria, Province of British Columbia

The Honourable H. A. D. Oliver, Q.C.
Conflict of Interest Commissioner